

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. CAA-III-077  
:   
DELTA REMOVAL, INC. and :   
ABINGTON MEMORIAL HOSPITAL, INC. :   
: COMPLAINT AND NOTICE OF  
Respondents : OPPORTUNITY FOR HEARING

COMPLAINT

This is an administrative action instituted against Abington Memorial Hospital (Abington) and Delta Removal, Inc. (Delta) by the United States Environmental Protection Agency (EPA) pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), for the assessment of a civil penalty.

GENERAL ALLEGATIONS

1. Respondent Abington is a Pennsylvania corporation doing business as a general hospital located at 1200 Old York Road in Abington, Pennsylvania.
2. Respondent Delta is a Pennsylvania corporation specializing in asbestos removal.
3. Under the National Emission Standards for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP), 40 C.F.R. Part 61, subpart M, "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. 40 C.F.R. § 61.141.
4. Respondent Abington's hospital is a "facility" as that term is defined at 40 C.F.R. § 61.141.
5. Abington hired Delta to remove pipe insulation and other asbestos-containing materials from the hospital property described in Paragraph 1 above.
6. Abington is the owner of a demolition or renovation activity and Delta is the operator of a demolition or renovation activity, as those terms are defined in 40 C.F.R. § 61.141.
7. On or about June 16, 1996, Respondent Delta submitted to EPA an "Asbestos Abatement and Demolition/Renovation Notification" form ("Notification") signed by Bob Lavelle, Jr., Project Manager for Delta, for the removal of materials described in Paragraph 5 above.

8. This Notification, dated June 16, 1996, stated that Delta would remove 1,025 linear feet of friable asbestos pipe insulation from the second floor of Abington's Highland building. The Notification also stated that the removal would be performed using glove bags or containment.

9. On or about July 15, 1996, Respondent Delta submitted to EPA a revised "Asbestos Abatement and Demolition/Renovation Notification" form ("Revised Notification"), dated July 15, 1996, amending the June 16, 1996 form by adding 60 linear feet of friable pipe insulation to the work to be performed and by changing the completion date.

10. The pipe insulation is friable asbestos material and is therefore "regulated asbestos containing material," (RACM) as that term is defined in 40 C.F.R. § 61.141.

11. On July 10, 1996, a representative of the EPA ("the inspector") conducted an inspection of the area of the Abington Hospital where the removal activity described in the Notification actually took place ("the site"). The purpose of this inspection was to verify Respondents' compliance with the Asbestos NESHAP.

12. The inspector observed that over forty sealed bags of asbestos waste had already been removed and were being stored in a room on the second floor. The inspector was told that the bags contained material removed on the previous day, July 9, 1996, as well as the day of the inspection, July 10, 1996. The inspector noted that the bags were very light, indicating that they may not contain water.

13. The supervisor of the Delta removal crew told the inspector that glove bags were used to remove the pipe insulation.

14. Respondents have not submitted any prior written request to the Administrator of EPA, as required under 40 C.F.R. §61.145(c)(3)(i), to permit removal of regulated asbestos-containing material without wetting.

15. The inspector asked members of the Delta removal crew to take eleven bags to a bathroom being used as a decontamination room. The inspector opened all eleven bags and took samples from seven. He noted that each bag contained pipe insulation, and that the pipe insulation in each bag was dry to the touch and visibly very dry and dusty, with no sign that water had ever been used during the stripping of the asbestos or the storage.

16. The inspector also noted that none of the inspected bags contained glove bags, indicating that the pipe insulation in these bags was removed without glove bags.

17. The inspector did not see proper containment where the work had been performed and was soon to be performed.

18. Under 40 C.F.R. § 61.145(c)(3), each owner or operator of a demolition or renovation activity must adequately wet all regulated asbestos-containing material during stripping or removal unless prior written approval to use alternate means is obtained from the Administrator and the owner uses prescribed alternate means of emissions controls.

#### COUNT I

19. The allegations in paragraphs 1 through 18 above are incorporated as if alleged herein.

20. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(3) on July 10, 1996 by not adequately wetting the pipe insulation, which is regulated asbestos-containing material, during removal on July 10, 1996. This constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

#### COUNT II

21. EPA incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

22. Respondents violated the requirement of 40 C.F.R. §61.145(c)(6)(i) on July 10, 1996 by failing to adequately wet the pipe insulation and by failing to ensure that it remained wet until collected and contained or treated in preparation for disposal. This constitutes a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

#### COUNT III

23. EPA incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

24. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(3) on July 9, 1996 by not adequately wetting the pipe insulation, which is regulated asbestos-containing material, during removal on July 9, 1996. This constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

COUNT IV

25. EPA incorporates by reference the allegations contained in Paragraphs 1 through 18 above.

26. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) on July 9, 1996 by failing to adequately wet the pipe insulation and by failing to ensure that it remained wet until collected and contained or treated in preparation for disposal. This constitutes a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

Proposed Penalty

Pursuant to Section 113(d and e) of the Act, 42 U.S.C. §7413(d and e), EPA proposes to assess a civil penalty of \$16,000 against Respondents as follows:

Count I: 40 C.F.R. § 61.145(c)(3), failure to wet RACM while stripping on July 10, 1996	\$ 5,000
Count II: 40 C.F.R. 61.145(c)(6), failure to keep RACM wet until collected and contained on July 10, 1996:	\$ 5,000
Count III: 40 C.F.R. § 61.145(c)(3), failure to wet RACM while stripping on July 9, 1996:	\$ 500
Count IV: 40 C.F.R. § 61.145(c)(6), failure to keep RACM wet until collected and contained on July 9, 1996:	\$ 500
Subtotal:	\$ 11,000
Size of the violator:	\$ 5,000
Economic Benefit - less than \$5,000 for water and labor	\$ 0
TOTAL PROPOSED PENALTY	\$16,000

This proposed penalty has been calculated in accordance with the statutory factors set forth in Section 113(e) of the Clean Air Act, which requires that the Agency take into consideration,

among other factors, the size of the business, the economic impact of the penalty on the business, the violators full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of previous penalties assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The proposed penalty is also calculated in accordance with the Clean Air Act Stationary Source Civil Penalty Policy and the Asbestos Demolition and Renovation Civil Penalty Policy, copies of which accompany this Complaint.

The proposed penalty of \$16,000 reflects the initial judgment of the EPA of Respondents ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on each business. Respondents have the burden of submitting appropriate documentation to rebut that presumption during this proceeding. In addition, to the extent that facts or circumstances unknown to EPA at the time of the issuance of this Complaint become known after issuance of this Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) a statement of the facts which constitute the grounds of defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A). Failure to Answer may result

in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).


#### **SETTLEMENT CONFERENCE**

EPA encourages settlement of the proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may confer with EPA in a settlement conference regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by EPA, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Douglas Snyder, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Snyder at (215) 566-2692. Please be advised that the Rules of Practice prohibit any unilateral discussion of the merits of a case with the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or the Presiding Officer after the issuance of a Complaint.

Sept 30 1996  
Date

  
\_\_\_\_\_  
Thomas J. Maslany, Director  
Air, Radiation & Toxics Division

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing was hand-delivered to the Regional Hearing Clerk, EPA Region III on September 30, 1996, and that true and correct copies were mailed via certified mail, return receipt requested, postage prepaid, to the following persons on the date shown below:

Mr. Felix M. Pilla, Pres.  
Abington Memorial Hospital, Inc.  
1200 Old York Road  
Abington, Pa. 19001

Robert Lavelle, Pres.  
Delta Removal, Inc.  
1345 Industrial Blvd.  
Southampton, Pa. 18966

10/1/96  
Date

Douglas J. Snyder  
Douglas Snyder  
Assistant Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

In Reply Refer To Mail Code: 3RC11

SEP 30 1996

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Lavelle, Pres.  
Delta Removal, Inc.  
1345 Industrial Blvd.  
Southampton, Pa. 18966

Re: Clean Air Act Complaint and Notice  
of Opportunity for Hearing  
EPA Docket No. CAA-III-077

Dear Mr. Lavelle:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., by Delta Removal, Inc. and Abington Memorial Hospital, Inc. The Complaint is based on violations of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("asbestos NESHAP"), codified at 40 C.F.R. Part 61, Subpart M. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations and proposed penalty.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within 30 days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer shall result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint and Notice without further proceedings.

You may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in your Answer to this Complaint. Whether or not a hearing is




requested, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

Douglas Snyder (3RC11)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

Mr. Snyder can be reached by telephone at (215) 566-2692.

Sincerely,

  
Thomas J. Maslany, Director  
Air, Radiation & Toxics Division

enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

SEP 3 0 1996

In Reply Refer To Mail Code: 3RC11

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Felix M. Pilla, Pres.  
Abington Memorial Hospital, Inc.  
1200 Old York Road  
Abington, Pa. 19001

Re: Clean Air Act Complaint and Notice  
of Opportunity for Hearing  
EPA Docket No. CAA-III-077

Dear Mr. Pilla:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., by Delta Removal, Inc. and Abington Memorial Hospital, Inc. The Complaint is based on violations of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("asbestos NESHAP"), codified at 40 C.F.R. Part 61, Subpart M. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to you in responding to the alleged violations and proposed penalty.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within 30 days of your receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer shall result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalty proposed in the Complaint and Notice without further proceedings.

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requested, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

Douglas Snyder (3RC11)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

Mr. Snyder can be reached by telephone at (215) 566-2692.

Sincerely,



Thomas J. Maslany, Director  
Air, Radiation and Toxics Division

Enclosure

Name/Address of Facility: Abington Hospital  
1200 Old York Rd Abington PA 19001

Date: 7-10-96 Inspector (photographer): Richard Porak

Date: 7-10-96 Inspector (photographer): Richard Porak

Remarks: \_\_\_\_\_

Inspector Signature: Anthony P. Pomeroy

**Name/Address of Facility:**

Date: 7-10-96

**Inspector (photographer):**

Time

**Sample No.**

### Description

20

21

27

23

Dry Suspect ACM

Dry Suspect ACM

### Dry / Gravity test

Dry / Friability test

**Remarks:**

**Inspector Signature:**

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III  
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Philadelphia, Pennsylvania 19107

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DELTA REMOVAL, INC. and :   
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: COMPLAINT AND NOTICE OF  
Respondents : OPPORTUNITY FOR HEARING

**ENVIRONMENTAL PROTECTION AGENCY'S  
PREHEARING EXCHANGE**

In accordance with the Order of Judge Pearlstein dated February 12, 1997, and the requirements of 40 C.F.R. § 22.19, Complainant U.S. Environmental Protection Agency (EPA) respectfully submits its prehearing exchange in this matter.

**EPA's Fact Witnesses**

1. Richard Ponak, Environmental Scientist  
U.S. EPA, Region III  
Philadelphia, Pa. 19107

Mr. Ponak conducted the inspections at Respondent Abington Memorial Hospital. He will testify about his observations during the July 10, 1996 inspection, his conversation with Respondent Delta Removal's supervisor on the job (Joseph Mahoney), the samples he took, and the results of the analysis of the samples. Mr. Ponak will also identify and describe the pictures he took at the hospital during his inspection. Finally, Mr. Ponak will testify regarding the calculation of the proposed penalty using the Clean Air Act (CAA) statutory factors, the CAA Stationary Source Civil Penalty Policy and the Asbestos Demolition and Renovation Civil Penalty Policy. If necessary, Mr. Ponak will also testify about what he saw during his follow-up inspection on July 22, 1996. Finally, EPA may amend this complaint to list Mr. Ponak as an expert witness.

2. Joseph Mahoney  
Delta Removal, Inc.

Mr. Mahoney, a Delta employee, was the supervisor in charge of the Delta workers performing the removal at Abington Hospital. If Mr. Mahoney is not called as a direct witness by Delta, or if his direct examination does not address the following issues, EPA will call Mr. Mahoney as a witness to ask about the following: where the pipe insulation in the bags at the scene on July 10, 1996 came from, the procedures used to remove the insulation from the pipes and place it into the bags, his whereabouts during the removal and bagging of the pipe insulation, the handling and treatment of the bags after they were filled, the precautions taken to isolate the removal area from other areas of the hospital, and the timing and location of air sampling.

3. Mr. Steven Forostiak  
Criterion Laboratories, Inc,  
3370 Progress Drive  
Bensalem, Pa. 19020

Mr. Forostiak, an employee of Criterion, performed air sampling for asbestos at Abington Hospital on July 9 and 10, 1996 during part of the asbestos abatement performed by Delta. If he is not called as a direct witness by Respondents, EPA will ask Mr. Forostiak to testify about his observations of the asbestos control methods used during the removal of asbestos on July 9th and 10th, 1996.

4. Mr. Keith Crawford  
Eagle Industrial Hygiene Associates, Inc.  
359 Dresher Rd.  
Horsham, Pa. 19044

Mr. Crawford is the employee of Eagle Industrial Hygiene who analyzed the asbestos samples submitted by EPA from Abington Hospital. If necessary, Mr. Crawford will testify concerning the chain of custody of the samples, the analytical method used to perform the analysis, the results of his analysis, and the authenticity of the analysis results sheet submitted by EPA as EPA Prehearing Exchange Exhibit No. 3.

EPA respectfully requests the right to amend this witness list to add other witnesses if such witnesses are necessary to support its complaint or respond to Respondents' defenses. In addition, EPA respectfully requests the right to substitute witnesses of similar qualifications and knowledge for the witnesses listed above if any of the above witnesses are unavailable to testify at the hearing. Any amendments to the witness list will be made in accordance with 40 C.F.R. Part 22 and the Prehearing Order.

### Statement Regarding Calculation of the Proposed Penalty

The proposed penalty in this case was calculated in accordance with 1) the statutory factors in §113(e) of the CAA, 2) the Clean Air Act Stationary Source Civil Penalty Policy (general penalty policy), and 3) the Asbestos Demolition and Renovation Civil Penalty Policy (asbestos penalty policy). Section 113(e) of the CAA requires that the Administrator consider the following factors when determining the amount of penalty to be assessed: size of the business, economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. These factors are the basis for the general penalty policy, and the asbestos penalty policy then tailors these factors in the general penalty policy to the circumstances of renovations and demolitions involving asbestos. The matrices in the asbestos penalty policy are used to calculate penalties for notification, work practice, emission, and other violations of the asbestos NESHAP. See pages 15 - 17 of the asbestos penalty policy. The matrices, in conjunction with the accompanying penalty adjustment factors in the asbestos penalty policy, take into consideration the factors enumerated in Section 113(e) of the CAA, including seriousness of the violation, length of time of the violation, and size of the violator. The CAA 113(e) factors were taken into account in calculating a penalty for the CAA violations alleged in EPA's complaint to arrive at a dollar amount for the gravity-based penalty.<sup>1</sup>

The gravity component for all violations other than notice violations is calculated based on, among other things, the amount of asbestos involved in the operation, as expressed in "units," which relates to the potential for environmental harm associated with the violative conduct. Each unit is defined as, among other things, 260 linear feet of pipe insulation. The amount of regulated asbestos containing material which was stripped at Abington Hospital, as stated in the revised notification, was 1,025 linear feet of friable pipe insulation, or 3.94 units. Therefore, according to the asbestos penalty policy, the penalties for violating the work practice standards were assessed based on an amount of asbestos which was less than or equal to ten units.

The gravity component for each count contained in the complaint was calculated as follows:

Count I: Failure to wet the RACM on July 10, 1996 while stripping it, in violation of 40

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<sup>1</sup> EPA exercised its discretion by not seeking any additional penalty to recover the economic benefit enjoyed by Delta and Abington in this case because the economic benefit is likely to be very small (the cost of water to wet the asbestos and the minimal additional labor costs which would have been incurred to wet the asbestos). See general penalty policy at page 7.



C.F.R. § 61.145(c)(3). According to the matrix for work practice violations on page 17 of the asbestos penalty policy, the first violation for less than or equal to 10 units should be assessed a penalty of \$5,000.

Count II: Failure to keep the RACM wet until collected and contained on July 10, 1996, in violation of 40 C.F.R. § 61.145(c)(6). According to the matrix for work practice violations on page 17 of the asbestos penalty policy, the penalty for the first violation for 10 or less units is \$5,000.

Count III: Failure to wet RACM while stripping on July 9, 1996, in violation of 40 C.F.R. § 61.145(c)(3). The matrix on page 17 of the asbestos penalty policy assesses a penalty of \$500 for each additional day of violation for 10 or less units. EPA decided to consider the July 9 date as the additional day of violation, instead of July 10th, because the inspection occurred on July 10th.

Count IV: Failure to keep RACM wet until collected and contained on July 9, 1996, in violation of 40 C.F.R. § 61.145(c)(6). According to the matrix for work practice violations on page 17 of the asbestos penalty policy, the penalty for each additional day of violation for 10 or less units is \$500. EPA decided to consider the July 9 date as the additional date of violation because the inspection took place on July 10th.

The total amount of penalty for the four counts listed above is \$11,000. The asbestos penalty policy then allows for an increase in the size of the gravity component based upon the size of the violator's business, in accordance with the general penalty policy. See p. 4. Neither penalty policy contemplates a reduction in the size of the penalty based on the size of the business. EPA chose to base this calculation on the size of Delta's business because Delta is a significantly smaller business than Abington Hospital. According to Dun & Bradstreet, Delta had a net worth of \$348,573 in 1994, the latest figures available at the time of the complaint, while Abington had a net worth of over \$200 million in 1995. The table on page 14 of the general penalty policy allows EPA to assess a penalty of \$5000 for a business with a net worth between \$100,000 and \$300,000.

The penalty for each count and the adjustment for the size of the business (which are considered the gravity component) were then added to the economic benefit (\$0) to arrive at an initial proposed penalty of \$16,000.

The general penalty policy then sets forth factors to adjust the gravity component of the initial proposed penalty. These factors include degree of willfulness or negligence, degree of cooperation, history of noncompliance, and environmental damage. See general penalty policy, p.15. Because the CAA is a strict liability statute for civil actions, willfulness or lack thereof is irrelevant to liability. Under the general penalty policy, willfulness or negligence may only be used to increase the gravity component of the penalty. In this case, EPA chose not to increase the penalty, even though it was, at the least, negligent for an experienced asbestos abatement

contractor to not wet during removal of obviously friable pipe insulation, and to not keep it wet until collected and contained for disposal.

Regarding Respondents' cooperation, EPA elected to neither increase nor decrease the gravity component of the proposed penalty based upon its determination that the cooperation was typical of that experienced during and after EPA inspections. The other two factors which enter into determining cooperation (prompt reporting of noncompliance and prompt correction of environmental problems) do not seem to apply in this matter. See general penalty policy, p.17.

History of noncompliance is a factor which can only be used to raise a penalty. See general penalty policy, p.17. EPA did not raise the penalty in this case based on any alleged noncompliance by Delta or Abington. EPA is not aware of any reported previous violations by Delta or Abington of the asbestos NESHAP or other federal environmental requirements.

Finally, neither Respondent has raised an inability to pay claim, and EPA is unaware of any information which suggests that Delta or Abington Hospital would suffer significant economic hardships because of this penalty. Respondents have not raised any inability to pay claims. EPA is also unaware of any penalty paid by either Respondent to the state or local governments for the same violations. No adjustment was made to the initial proposed penalty amount based on these criteria.

#### Applicability of the Paperwork Reduction Act

The Paperwork Reduction Act does not apply or affect this case. EPA's complaint alleges that Abington Hospital and Delta Removal violated the asbestos NESHAP regulations by: 1) failing to wet RACM while stripping it on July 9 and 10, 1996 (40 C.F.R. §61.145(c)(3), and 2) failing to keep the RACM wet until collected and contained on July 9 and 10, 1996 (40 C.F.R. §61.145(c)(6). Thus, the complaint does not allege that Delta or Abington failed to perform any paperwork task, and does not seek any penalty for such a failure. Any finding of liability will rest upon a determination that Abington and Delta failed to wet RACM during stripping and failed to keep it wet until contained and collected for disposal. Failing to submit data or forms to EPA or any other governmental agency is not an element of EPA's complaint.

#### EPA's Initial List of Exhibits

1. Initial Asbestos Abatement and Demolition/Renovation Notification, dated 6/19/96. (2 pages, 2-sided)
2. Revised Asbestos Abatement and Demolition/Renovation Notification, dated 7/15/96. (2 pages, 2-sided).

3. Analytical Results of suspected asbestos samples from Abington Hospital, performed by Eagle Industrial Hygiene Assocs. (2 pages).
4. Inspection Report of Richard Ponak, EPA, of Abington Hospital, dated 7/10/96 (3 pages, one page double-sided).
5. Inspection Report of Richard Ponak, EPA, of Abington Hospital, dated 7/22/96 (1 page).
6. Copy of USPS Return Receipt for complaint sent to Abington Hospital (one page).
7. Copy of USPS Return Receipt for complaint sent to Delta Removal (one page).
8. Letter from Richard Montalbano, Abington Memorial Hospital, to Doug Snyder, EPA, dated 11/13/96, re: Clean Air Act Complaint and Notice of Opportunity for Hearing (1 page w/ 2 page attachment).
9. Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991.
10. Asbestos Demolition and Renovation Civil Penalty Policy, dated May 5, 1992.
11. Dun & Bradstreet report for Delta Removal, Inc., dated 8/5/96.
12. Dun & Bradstreet Report of Abington Hospital, Inc., dated 8/5/96.
13. Photo log, dated 7/10/96, compiled by EPA inspector Richard Ponak, for photos taken at Abington Hospital, describing subject of each picture.
14. Photos taken by Richard Ponak, EPA, during his inspection on 7/10/96 at Abington Hospital. The photos are separately numbered but placed into 4 protective plastic sleeves, labelled 14(a) through 14(d), with each sleeve holding 6 pictures (except sleeve 14(d), which holds 5 pictures).
  - (a) Photos 1 through 6
  - (b) Photos 7 through 12
  - (c) Photos 13 through 18
  - (d) Photos 19 through 23
15. Summary of Events for 7/9/96, prepared by Stephen Forostiak, Criterion Laboratories, Inc., for air monitoring at Abington Hospital, including sheet showing names of asbestos removal workers (3 pages).
16. Results of Environmental Monitoring - Asbestos, prepared by Criterion Laboratories, Inc. for monitoring on 7/9/96 at Abington Hospital, Inc. (2 pages).

17. Summary of Events for 7/10/96, prepared by Stephen Forostiak, Criterion Laboratories, Inc., for air monitoring at Abington Hospital, including sheet showing names of asbestos removal workers (4 pages).

18. Results of Environmental Monitoring - Asbestos, prepared by Criterion Laboratories, Inc. for monitoring on 7/10/96 at Abington Hospital, Inc. (2 pages).

EPA respectfully reserves the right to supplement this list of exhibits should it be necessary to do so, in accordance with the Order of this Court dated February 12, 1997 and 40 C.F.R. Part 22.

Place and Date of Hearing

EPA requests that the hearing be held at EPA Region III's offices at the 841 Chestnut Building, Philadelphia, Pa. The violation occurred at Abington Memorial Hospital, which is just beyond the Philadelphia city limits in Abington, Montgomery County. EPA's offices have several rooms suitable for a hearing, and the building contains a federal tax courtroom which can be reserved by EPA for hearings. Also, 3 of the 4 witnesses listed by EPA work in Montgomery County or the City of Philadelphia.

EPA estimates that it will take approximately 4 to 7 hours to put on its direct case, depending on the length of the Respondents' cross-examination. Finally, it is difficult to provide specific hearing dates at this time because EPA's witnesses have not finalized their summer vacation plans. However, the parties should be able to agree upon a date or dates if the court provides several suggested dates acceptable to the court.

Respectfully submitted,

Douglas J. Snyder  
Assistant Regional Counsel  
U.S. EPA, Region III  
(215) 566-2692

CERTIFICATE OF SERVICE

I hereby certify that on the date signed below, the original of the above EPA's Prehearing Exchange, dated April 9, 1997, was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that copies were sent by the method shown below to the persons shown below:

By U.S. mail, postage prepaid

Honorable Andrew S. Pearlstein  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Mailcode 1900  
401 M St., S.W.  
Washington, D.C. 20460

Mr. Felix M. Pilla, Pres.  
Abington Memorial Hospital, Inc.  
1200 Old York Road  
Abington, Pa. 19001

Mr. Michael Libor, Esq.  
Morgan Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993  
Counsel for Delta Removal, Inc.

\_\_\_\_\_  
Date

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841 Chestnut Building  
Philadelphia, Pa. 19107  
(215) 566-2692

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

IN RE:	:	DOCKET NO. CAA-III-077
	:	
DELTA REMOVAL, INC. and	:	
ABINGTON MEMORIAL HOSPITAL, INC.	:	
	:	COMPLAINT AND NOTICE OF
Respondents	:	OPPORTUNITY FOR HEARING

COMPLAINT

This is an administrative action instituted against Abington Memorial Hospital (Abington) and Delta Removal, Inc. (Delta) by the United States Environmental Protection Agency (EPA) pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), for the assessment of a civil penalty.

GENERAL ALLEGATIONS

1. Respondent Abington is a Pennsylvania corporation doing business as a general hospital located at 1200 Old York Road in Abington, Pennsylvania.
2. Respondent Delta is a Pennsylvania corporation specializing in asbestos removal.
3. Under the National Emission Standards for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP), 40 C.F.R. Part 61, subpart M, "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. 40 C.F.R. § 61.141.
4. Respondent Abingtons hospital is a "facility" as that term is defined at 40 C.F.R. § 61.141.
5. Abington hired Delta to remove pipe insulation and other asbestos-containing materials from the hospital property described in Paragraph 1 above.
6. Abington is the owner of a demolition or renovation activity and Delta is the operator of a demolition or renovation activity, as those terms are defined in 40 C.F.R. § 61.141.
7. On or about June 16, 1996, Respondent Delta submitted to EPA an "Asbestos Abatement and Demolition/Renovation Notification" form ("Notification") signed by Bob Lavelle, Jr., Project Manager for Delta, for the removal of materials described in Paragraph 5 above.

8. This Notification, dated June 16, 1996, stated that Delta would remove 1,025 linear feet of friable asbestos pipe insulation from the second floor of Abingtons Highland building. The Notification also stated that the removal would be performed using glove bags or containment.

9. On or about July 15, 1996, Respondent Delta submitted to EPA a revised "Asbestos Abatement and Demolition/Renovation Notification" form ("Revised Notification"), dated July 15, 1996, amending the June 16, 1996 form by adding 60 linear feet of friable pipe insulation to the work to be performed and by changing the completion date.

10. The pipe insulation is friable asbestos material and is therefore "regulated asbestos containing material," (RACM) as that term is defined in 40 C.F.R. § 61.141.

11. On July 10, 1996, a representative of the EPA ("the inspector") conducted an inspection of the area of the Abington Hospital where the removal activity described in the Notification actually took place ("the site"). The purpose of this inspection was to verify Respondents compliance with the Asbestos NESHAP.

12. The inspector observed that over forty sealed bags of asbestos waste had already been removed and were being stored in a room on the second floor. The inspector was told that the bags contained material removed on the previous day, July 9, 1996, as well as the day of the inspection, July 10, 1996. The inspector noted that the bags were very light, indicating that they may not contain water.

13. The supervisor of the Delta removal crew told the inspector that glove bags were used to remove the pipe insulation.

14. Respondents have not submitted any prior written request to the Administrator of EPA, as required under 40 C.F.R. §61.145(c)(3)(i), to permit removal of regulated asbestos-containing material without wetting.

15. The inspector asked members of the Delta removal crew to take eleven bags to a bathroom being used as a decontamination room. The inspector opened all eleven bags and took samples from seven. He noted that each bag contained pipe insulation, and that the pipe insulation in each bag was dry to the touch and visibly very dry and dusty, with no sign that water had ever been used during the stripping of the asbestos or the storage.

16. The inspector also noted that none of the inspected bags contained glove bags, indicating that the pipe insulation in these bags was removed without glove bags.

17. The inspector did not see proper containment where the work

had been performed and was soon to be performed.

18. Under 40 C.F.R. § 61.145(c)(3), each owner or operator of a demolition or renovation activity must adequately wet all regulated asbestos-containing material during stripping or removal unless prior written approval to use alternate means is obtained from the Administrator and the owner uses prescribed alternate means of emissions controls.

#### COUNT I

19. The allegations in paragraphs 1 through 18 above are incorporated as if alleged herein.

20. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(3) on July 10, 1996 by not adequately wetting the pipe insulation, which is regulated asbestos-containing material, during removal on July 10, 1996. This constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

#### COUNT II

21. EPA incorporates by reference the allegations contained in Paragraphs 1 through 20 above.

22. Respondents violated the requirement of 40 C.F.R. §61.145(c)(6)(i) on July 10, 1996 by failing to adequately wet the pipe insulation and by failing to ensure that it remained wet until collected and contained or treated in preparation for disposal. This constitutes a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

#### COUNT III

23. EPA incorporates by reference the allegations contained in Paragraphs 1 through 20 above.

24. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(3) on July 9, 1996 by not adequately wetting the pipe insulation, which is regulated asbestos-containing material, during removal on July 9, 1996. This constitutes a violation of Section 112 of the Act, 42 U.S.C. § 7412.

#### COUNT IV

25. EPA incorporates by reference the allegations contained in Paragraphs 1 through 20 above.



26. Respondents failed to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) on July 9, 1996 by failing to adequately wet the pipe insulation and by failing to ensure that it remained wet until collected and contained or treated in preparation for disposal. This constitutes a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

#### **Proposed Penalty**

Pursuant to Section 113(d and e) of the Act, 42 U.S.C. §7413(d and e), EPA proposes to assess a civil penalty of \$16,000 against Respondents as follows:

Count I: 40 C.F.R. § 61.145(c)(3), failure to wet RACM while stripping on July 10, 1996	\$ 5,000
Count II: 40 C.F.R. 61.145(c)(6), failure to keep RACM wet until collected and contained on July 10, 1996:	\$ 5,000
Count III: 40 C.F.R. § 61.145(c)(3), failure to wet RACM while stripping on July 9, 1996:	\$ 500
Count IV: 40 C.F.R. § 61.145(c)(6), failure to keep RACM wet until collected and contained on July 9, 1996:	\$ 500
Subtotal:	\$ 11,000
Size of the violator:	\$ 5,000
Economic Benefit - less than \$5,000 for water and labor	\$ 0
TOTAL PROPOSED PENALTY	\$16,000

This proposed penalty has been calculated in accordance with the statutory factors set forth in Section 113(e) of the Clean Air Act, which requires that the Agency take into consideration, among other factors, the size of the business, the economic impact of the penalty on the business, the violators full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of previous penalties assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The proposed penalty is also calculated in accordance with the Clean Air Act Stationary Source Civil Penalty Policy and the Asbestos

Demolition and Renovation Civil Penalty Policy, copies of which accompany this Complaint.

The proposed penalty of \$16,000 reflects the initial judgment of the EPA of Respondents ability to pay the penalty and to continue in business based on the size of their businesses and the economic impact of the proposed penalty on each business. Respondents have the burden of submitting appropriate documentation to rebut that presumption during this proceeding. In addition, to the extent that facts or circumstances unknown to EPA at the time of the issuance of this Complaint become known after issuance of this Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) a statement of the facts which constitute the grounds of defense, (2) a concise statement of the facts which Respondent intends to place at issue in the hearing, and (3) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A). Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d).

#### **SETTLEMENT CONFERENCE**

EPA encourages settlement of the proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may confer with EPA in a settlement conference regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by EPA, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Douglas Snyder, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Snyder at (215) 566-2692. Please be advised that the Rules of Practice prohibit any unilateral discussion of the merits of a case with the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or the Administrative Law Judge after the issuance of a Complaint.

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Date

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Thomas J. Maslany, Director  
Air, Radiation & Toxics Division